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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 ADAM BRENT WALLACE,

11 Defendant.

Case No. 2:11-cr-00094-KJD-CWH
2:15-cv-00526-KJD-CWH

ORDER

12
13 Before the Court is Defendant Adam Brent Wallace's Motion under 28 U.S.C. § 2255 to
14 Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#144). Also before the
15 Court is Defendant's Motion for Appointment of Counsel (#146). Defendant also filed a Motion
16 to Dismiss for Failure to State an Offense (#147) which the Court will construe as another
17 § 2255 motion. The Government filed a response in opposition (#148) to which Defendant has
18 replied (#149). The Court recognizes that Defendant is *pro se*, and has construed his pleadings
19 liberally.

20 I. Background

21 In 2011, Defendant pleaded guilty to receipt of child pornography (#21/22). The district
22 court subsequently sentenced Defendant to 97 months' imprisonment followed by a lifetime of
23 supervised release (#31). Defendant filed a § 2255 motion (#53), which the district court denied
24 (#66). Later, Defendant filed the present motions.

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1 II. Analysis

2 A) Defendant's Motions to Vacate under U.S.C. § 2255 (#144/147)

3 This is Defendant's second and third § 2255 motions filed with this Court. 28 U.S.C.
4 § 2255 provides that:

5 (h) A second or successive motion must be certified as provided in section 2244
6 by a panel of the appropriate court of appeals to contain—

7 (1) newly discovered evidence that, if proven and viewed in light of the
8 evidence as a whole, would be sufficient to establish by clear and convincing
9 evidence that no reasonable factfinder would have found the movant guilty of the
10 offense; or

11 (2) a new rule of constitutional law, made retroactive to cases on collateral
12 review by the Supreme Court, that was previously unavailable.

13 The Ninth Circuit has not certified any second or successive motions. Consequently, this Court
14 must deny Defendant's § 2255 motions.

15 B) Defendant's Motion for Appointment of Counsel (#146)

16 Defendant has no right to further counsel. As explained in Pennsylvania v. Finley, 481
17 U.S. 555 (1987)

18 [T]he right to appointed counsel extends to the first appeal of right, and no
19 further. Thus, we have rejected suggestions that we establish a right to
20 counsel on discretionary appeals. Wainwright v. Torna, 455 U. S. 586
21 (1982); Ross v. Moffitt, 417 U. S. 600 (1974). We think that, since a
22 defendant has no federal constitutional right to counsel when pursuing a
23 discretionary appeal on direct review of his conviction, a fortiori he has no
24 such right when attacking a conviction that has long since become final
25 upon exhaustion of the appellate process. See Boyd v. Dutton, 405 U. S. 1,
26 405 U. S. 7, n. 2 (1972) (POWELL, J., dissenting).

27 However, an indigent petitioner seeking relief under 28 U.S.C. § 2255 may move the
28 court for appointment of representation to pursue that relief. 18 U.S.C. § 3006(A)(2)(B). The
29 court has discretion to appoint counsel when the interest of justice so requires. 18 U.S.C. §
30 3006(A)(2). The interest of justice so requires where the complexities of the case are such that
31 denial of counsel would amount to a denial of due process. See Brown v. United States, 623 F.2d

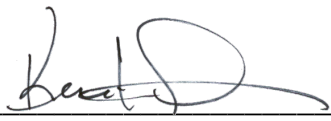
1 54, 61 (9th Cir. 1980). Here, the Court has reviewed the documents and pleading on file in this
2 matter and finds that appointment of counsel is not warranted. Defendant's only recourse is to
3 obtain an order from the appropriate court of appeals authorizing the district court to consider the
4 motion. See Rule 9, Rules Governing § 2255 Proceedings. Therefore, the Court denies
5 Defendant's Motion to Appoint Counsel.

6 III. Conclusion

7 Accordingly, it is **HEREBY ORDERED** that Defendant's Motions under 28 U.S.C. §
8 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#144/147) are
9 **DENIED**;

10 **IT IS FURTHER ORDERED** that Defendant is **DENIED** a certificate of appealability;
11 **IT IS FINALLY ORDERED** that Defendant's Motion for Appointment of Counsel
12 (#146) is **DENIED**.

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14 DATED this 2nd day of July 2015.

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18 Kent J. Dawson
United States District Judge